

Identifying and Responding to Reproductive Coercion in a Legal Context: Issues Paper

Professor Heather Douglas, Dr Nicola Sheeran, Dr Laura Tarzia.

May 2020

Professor Heather Douglas
Law School
University of Queensland
h.douglas@law.uq.edu.au

Dr Nicola Sheeran
School of Applied
Psychology
Griffith University
n.sheeran@griffith.edu.au

Dr Laura Tarzia
Department of General
Practice
The University of
Melbourne
laura.tarzia@unimelb.edu.au



REPRODUCTIVE COERCION

What is it?

Reproductive coercion is underlined by a woman's compromised ability to use, or have access to, safe contraceptive methods (Clark, Allen, Goyal, Raker, & Gottlieb, 2014), as well as a lack of control over the outcome of a pregnancy. Perpetrators draw on physical, psychological, sexual, economic, and other strategies to maintain power and control over women's reproductive choices (Miller, Jordan, Levenson, & Silverman, 2010).

What does it look like?

For example, a woman may be threatened with physical harm if she does not become pregnant, continue a pregnancy, or terminate a pregnancy, or she may be psychologically intimidated to prevent her from terminating a pregnancy. Behaviours associated with reproductive coercion include sabotaging birth control such as throwing away contraceptive pills, forced unprotected sex, or intentional misuse of condoms, or financially preventing the woman from obtaining forms of contraception (Price et al, 2019). At times, reproductive coercion can be subtle, for example, continued emotional manipulation or blackmail to influence women's decision making.

Is reproductive coercion recognised in any legal definitions?

Reproductive coercion is not defined in any Australian legal definition. When reproductive coercion takes place within a dating or intimate partner relationship it may be captured in some definitions of domestic and family violence. In Commonwealth family law¹ and Victorian² and Queensland³ civil protection order statutes, the definition of domestic and family violence includes coercive and controlling behaviour. Reproductive coercion is, arguably, a form of coercive and controlling behaviour under these legal definitions (Douglas & Kerr, 2018). However, the definition of family violence in the migration law⁴ does not include coercive control and may not encapsulate coercive and controlling behaviour.

¹ *Family Law Act 1975 (Cth)*, s4AB.

² *Family Violence Protection Act 2008 (Vic)* s5

³ *Domestic and Family Violence Protection Act 2012 (Qld)*, s8.

⁴ See *Migration Regulations 1994 (Cth)* Reg. 1.21, 1.23(8) & (9).

THE STUDY

Methodology

We undertook six focus groups involving 38 community service providers. 11 of them were lawyers, one was a paralegal worker and 26 were social workers or counsellors. All of the participants delivered services to women who have experienced domestic and family violence. Three of the focus groups took place in Melbourne and three took place in Brisbane. Melbourne and Brisbane were selected for this initial study because the definition of domestic and family violence is similar in both states.

The focus groups were semi-structured in nature, and the aim was to explore service providers' experience, understanding and recognition of reproductive coercion in their practice and their views about its role in legal responses.

What were the key points raised by workers in identifying and responding to reproductive coercion?

Our focus groups identified five key issues:

1. Reproductive coercion is understood very broadly and overlaps with other forms of family violence including physical and sexual assault, financial abuse, technology-facilitated abuse and coercive control.
2. CALD women have vulnerabilities that can be exploited in the context of RC.
3. Women may not identify their experience as reproductive coercion- the terminology is too complex.
4. Women are likely to be reluctant to disclose reproductive coercion until they have built up trust with their worker / lawyer.
5. Women face a number of legal system risks if they disclose reproductive coercion in court documents.

We discuss these issues in the following sections of this Issues Paper.

1. Reproductive coercion is understood very broadly and overlaps with other forms of family violence including physical and sexual assault, financial abuse, technology-facilitated abuse and coercive control.

The majority of participants were able to clearly articulate behaviours that they considered to be 'reproductive coercion'. These included perpetrators forcing women (via physical violence or threats) to become pregnant against their will, forcing them to terminate a wanted pregnancy (including via the use of financial abuse), using physical violence to harm the unborn child, or sabotaging contraception. However, there was no one definition that was common across the discussion groups. Furthermore, other behaviours were raised as potentially being part of reproductive coercion, including 'female genital mutilation', sexual violence and medical refusal of treatment, demonstrating that some participants defined it quite broadly.

Participants readily identified the complexity of reproductive coercion and its overlaps with both family violence and sexual violence.

I couldn't separate the sexual violence from the reproductive coercion and the domestic violence in itself because it all goes hand in hand. (FG 1)

You kind of go, reproductive coercion, it is just like, isn't that sexual assault? Reproductive coercion, isn't that coercive controlling violence? (FG 2)

Participants provided many examples of perpetrators using physical and psychological tactics to control women's reproductive choices.

I've had a client where it looked like many different things. This particular client, there was rape present. There was removal of condoms. [He] was also telling her - and this was when she was attempting to leave the relationship as well and keeping in mind that this was quite young woman as well. She was about 22 and she'd just had her first child. The way he was keeping her there was saying 'If you don't do this or if you don't have unprotected sex with me, I'm just going to go have a baby with someone else right this instant.' Then he would pull out his phone, show her that he had all these messages from all these women just to keep her. (FG 6)

They withdraw all the financial support and everything so leaving the woman pregnant with no support, nowhere to go. (FG 5)

The relationship between reproductive coercion and coercive control was articulated by many participants:

It was high levels of control in the whole relationship. This was just one aspect. She couldn't be in a room away from him. There was very significant control. It was just almost an extension of that, it was just her entire body. (FG 2)

They also identified links between reproductive coercion and physical violence during pregnancy.

The guy was - he was kicking her in the stomach to induce the - essentially for her to lose the baby. (FG 3)

They also identified links between technology facilitated abuse and reproductive coercion.

Particularly because reproductive coercion sits under coercive control and other coercive behaviours, other surveillance behaviours, a lot of the time. So you have to be super mindful of - incredibly mindful of how you're actually engaging with her in the first place, deleting call logs, deleting text messages from us, deleting browser histories, all that tech safety is a huge part of it - especially medical records and My Health Record. Particularly if they have children and they have a joint My Health Record account he could see everything she does. (FG1)

Many participants expressed difficulty in distinguishing reproductive coercion from sexual violence. In many cases, reproductive coercion was considered to be a form of sexual violence (or the reverse, with sexual violence being defined as a form of reproductive coercion).

There's a fine line at times with sexual abuse and rape as well because rape is also a form of reproductive coercion in relationships. (FG 1)

Neglect, withdrawal. In a marriage when both have a commitment or committed to increase a family and after two, three years, suddenly the man says, I don't want to have children, and forces her to use a condom. This is also a kind of sexual abuse. (FG 4)

However, some participants did acknowledge that reproductive coercion can exist independently of sexual violence:

Sometimes it exists without the sexual assault. The sex can be consensual, but not the outcome. (FG 5)

2. CALD women have vulnerabilities that can be exploited in the context of RC.

Many participants highlighted that reproductive coercion was a common issue for migrant women presenting to their services. There appeared to be an added layer of complexity and risk for migrant women due to structural vulnerabilities (i.e., cultural/community pressures, language barriers, lack of knowledge, insecure visa's, isolation) that made their experiences more complex.

Or she can't speak English...when it comes to migrant and refugees, the level of accepting or navigating the service from mainstream is very complex. Police, sexual assault, in the context of reproductive coercion as well as child protection involved with the children. (FG 5)

Reproductive coercion was often either being told they had to become pregnant when they did not want to, being told to abort a pregnancy they wanted, or the perpetrator withholding sex so that the woman could not become pregnant.

I think, our clients, when they marry someone and come here... the thing is always to start a family, that's one of the important things for them... But often ... because of this issue, they are either forced to not have a child, or sometimes made – if there's a pregnancy, have a termination. (FG 4)

In cases of forced termination, perpetrators were often the husband as well as in-laws and religious leaders.

it's not only the perpetrator, it's also aided by other family members who get involved in – let's say, with forcing the woman to have an abortion. There may be a mother-in-law, father-in-law, could be other family members, who make the decision for the woman. They might help the perpetrator.

I think it's also pushed by religious leaders, as well. But then they also use some of their writings of the specific book for that religion, to explain that there is a timeframe also, to have an abortion or not to have it. (FG 4)

The consensus was that religious leaders would support the perpetrators position, which ever it was.

Not speaking English also left the woman vulnerable to the perpetrator acting as a translator when she attended health care appointments. Under these circumstances, reproductive coercion usually took the form of being prescribed contraception to prevent pregnancy or in extreme situations, consenting to medical procedures without their knowledge (i.e., a hysterectomy).

Yeah. There was a - yeah, there was a medical procedure performed on one of our clients without her consent or knowledge until after the fact. (FG 2)

the women have been made to take something, like vitamins, but it was really a contraception, when they found out (FG 4)

This suggests that reproductive coercion may be more complex for certain women. Though it was clear in the current study that some CALD women may be particularly vulnerable to reproductive coercion, it is also possible that other women (i.e., women with a disability, women who are Aboriginal and/or Torres Strait Islander) may also be more vulnerable to reproductive coercion.

3. Women may not identify their experience as ‘reproductive coercion’ - the terminology is too complex.

There was some discussion amongst focus group participants about the complexity of the term ‘reproductive coercion’ and the need for the terminology to be translated in a way that was meaningful to women.

In referring to a woman who was trying to complete a protection order application by herself, one participant commented: *‘I don’t think, for the lay person, that those two words [reproductive coercion] would mean a whole lot if you’re giving it a go yourself and taking a look at what you can include in your application.’ (FG 2).*

For example a participant in one focus group described the phrase as a ‘fancy term’:

It's kind of a fancy word. That's what I see it as. It's quite fancy terms.... So I think you'd be like, ‘oh that's not me.’ Whereas if you had those explicit examples of tampering with contraception, saying he's wearing a condom when he's not wearing a condom.... someone could read that and be like, ‘oh my God he did that to me. I didn't know that that was reproductive’ - I think that could be really helpful. (FG 1)

In another focus group a participant expressed some confusion and uncertainty about the meaning of the term observing that reproductive coercion was not a term used in her practice and described it as a ‘tricky term’:

Participant: In terms of when I saw the reproductive coercion I thought wow, what does that look like? My mind just - exponential directions my mind was going in as to what that means and what that would look like in practice. It's not a term or a focus or something that we explore with it. It's not in our processes. (FG 6)

Common between focus groups was the view that reproductive coercion should be captured in protection order legislation, the *Family Law Act*, and the *Migration Regulations* in the definition of domestic and family violence. However, given the complexity of the phrase, a list of examples of the kind of behaviours that are commonly associated with reproductive coercion

should be provided: *'A list of examples is good, because it's just another form [of domestic and family violence] you know.'* (FG 4)

4. Women are likely to be reluctant to disclose reproductive coercion until they have built up trust with their worker / lawyer.

Most participants noted that disclosures of reproductive coercion happened once a relationship had been built:

it doesn't get disclosed in the first few sessions, it probably comes up later on when they get more comfortable in disclosing to the case workers. (FG 4)

once relationship built with trust, then they start to release more information about actually what happened to me (FG 4)

This was particularly true when the women were experiencing a long history of violence and control, where there was sexual assault, or where they initially engaged with the service for a different matter.

I guess, in the casework, you've got a longer relationship-building process, and that's when that full history comes out over time, as your relationship builds. (FG 3)

it is very psychologically damaging for the women. They can't speak about it. It's one of the hardest things for them. Even though they've endured so much abuse, it's really difficult for them to bring it up... It takes them a really long time... It's intimate, isn't it? (FG3)

I think the longer the relationship between us and the client, the more you build the trust, the more likely - she may well - something that starts off as a property matter in a family law file - it may be months down the road before she starts disclosing to you the sexual assaults, the coercion, the family violence, simply because you've got into a position of trust (FG 3)

Participants felt that the reason why it took time for some women was because discussing sex in some cultures was taboo

I know a lot of the Sri Lankan women that I work with, in our culture, sex is a taboo topic. Especially for women to talk about. (FG 5)

Additionally, women did not realise that reproductively coercive behaviours were abuse. For these women, disclosures occurred once they had been educated about what constituted abusive and coercive behaviour.

and for those clients [from different cultural backgrounds] in particular, there seems to be very little resistance; my husband said you're not having this baby and so that was it....And also, sometimes, they don't identify it as abuse themselves. Because of whatever their cultural background is. Also, it's become normalised. (FG 2)

Yeah, I think when you start to talk to women about their – what family violence is, and the different forms of violence, that's kind of when they start to open up more about things. Because as you were saying, a lot of times women don't realise that being forced to have sex with your husband is even a form of violence. (FG 5)

The exceptions to this were in a duty lawyer setting where there was less time spent with a client and thus reproductive coercion had to be more obvious or when it was the only reason a person sought assistance. In these situations, disclosures were made earlier in the relationship.

really, in that duty lawyer setting, it'd probably be something that is fairly obvious that it is happening, or it's part of the basis of the application - or the person is pregnant (FG 3)

They do disclose that information. Sometimes it is the only reason that they actually seek out our help. (FG 5)

5. Women face a number of legal system risks if they disclose reproductive coercion in court documents.

A number of the study participants said that the woman's experience of reproductive coercion, in the context of domestic and family violence, might be included, where appropriate, in legal

documents. For example it might be included in applications and statements or affidavits prepared for civil protection⁵ and family law⁶ matters.

However, participants reported that incidents of reproductive coercion were rarely included in court documents that they prepared on behalf of women or assisted women to prepare.

One of the issues raised by some participants was that when women reported reproductive coercion it had usually happened in the past, prior to separation and magistrates may see it as ‘historic’ and so not relevant to the current application:

Participant: ‘... the notion of family violence being historic is still very prevalent in the decision-making in the family law courts.’ (FG 3).

Generally participants believed that including allegations of reproductive coercion in court documents would have similar effects and results as including allegations of sexual assault. Drawing on their experience of including sexual assault allegations in court documents, the participants identified several potential risks with inclusion of reproductive coercion. Some participants suggested these risks were heightened when women were not represented by a lawyer.

Risks included that:

Risk 1: The magistrate or judge’s response to allegations of reproductive coercion were unpredictable and may re-traumatise the woman:

Participant: If [the allegation of reproductive coercion] actually did get into the courts, then the actual experience or the response from the bench is unpredictable; sometimes hostile, unsympathetic.

Participant: Sometimes re-traumatising. (FG 2).

Risk 2: Again drawing on their experiences of women making sexual assault allegations in court it was observed that sometimes magistrates or judges might read out or ask about the

⁵ Family Violence Protection Act 2008 (Vic) s5; Domestic and Family Violence Protection Act 2012 (Qld), s8.

⁶ Family Law Act 1975 (Cth), s4AB.

allegation to an open court. This might make the woman feel embarrassed or ashamed, adding to her trauma.

... some magistrates take issue if you're really, I guess pointing out, sexual assaults that haven't been reported. It's very difficult for our clients to deal with that questioning over such a sensitive topic as well. (FG 2)

Risk 3: Allegations of reproductive coercion were more likely to be denied or contested by an alleged abuser, potentially leading to the extension of litigation and resulting in the woman being cross-examined about the allegation.

When you start putting in a really serious allegation, it's 'oh, I never did that, I'm going to fight this'. Then they've got to go through that system and be cross-examined. (FG 2)

References

- Clark, L. E., Allen, R. H., Goyal, V., Raker, C., & Gottlieb, A. S. (2014). Reproductive coercion and co-occurring intimate partner violence in obstetrics and gynecology patients. *American Journal of Obstetrics and Gynecology*, 210(1), 42.e1-42.e8. <https://doi.org/10.1016/j.ajog.2013.09.019>
- Douglas, H. & Kerr, K. (2018). Domestic and Family Violence, Reproductive Coercion and the Role for Law. *Journal of Law and Medicine* 26(2), 341-355
- Miller, E., & Silverman, J. G. (2010). Reproductive coercion and partner violence: Implications for clinical assessment of unintended pregnancy. *Expert Rev Obstet Gynecol.*, 5(5), 511–515. <https://doi.org/10.1586/eog.10.44>
- Price, L., Sharman, L., Douglas, H., Sheeran, N., & Dingle, G. (2019). Experiences of reproductive coercion in Queensland women. *Journal of Interpersonal Violence*, 1-21. Doi: 10.1177/0886260519846851.